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the city engineer and claim made of the city engineer before first payment after such work is done, and the bedrock was much deeper, and before doing the extra work the contractor wrote the engineer, asking whether he should excavate to bedrock, and was ordered by letter to do so, and immediately replied, asking for estimate of the value of such work, which the engineer refused to give, there was sufficient compliance with the contract to entitle the contractor to recover the value of the extra work.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. §§ 905, 910; Dec. Dig. § 374 (4).\* 10 Va.-W. Va. Enc. Dig. 208.]

**3. Appeal and Error (§ 866 (2)\*—Scope of Review.**—Where demurrer is interposed to plaintiff's evidence, and he recovers, the court on appeal is not concerned with preponderance of evidence.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 866 (2).\* 1 Va.-W. Va. Enc. Dig. 576.]

Error to Hustings Court of Richmond.

Action by I. J. Smith & Co., Incorporated, against the City of Richmond. Judgment for plaintiff, and defendant brings writ of error. Judgment affirmed.

*H. R. Pollard*, of Richmond, for plaintiff in error.

*O'Flaherty, Fulton & Byrd* and *Gunn & Mathews*, all of Richmond, for defendant in error.

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CITY OF PORTSMOUTH *v.* JOBSON.

June 8, 1916.

[89 S. E. 127.]

**Appeal and Error (§ 999 (1)\*—Review—Verdict—Question of Fact.**—The verdict of a jury is conclusive as to questions of fact.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3912-3915, 3917-3921; Dec. Dig. § 999 (1).\* 1 Va.-W. Va. Enc. Dig. 605.]

Error to Hustings Court of Portsmouth.

Suit by Jobson against the City of Portsmouth. To review a judgment for plaintiff, defendant brings error. Affirmed.

*John W. Happer*, of Portsmouth, for plaintiff in error.  
*Willcox, Cooke & Willcox*, of Norfolk, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.